

UCC -

Apex Demolition Inc. (“Apex”) is a successful Rhode Island company specializing in demolition and removal of boulders from major construction projects in Rhode Island. In early 2004, Apex was working on a particularly difficult job in Providence, Rhode Island when it encountered unusually dense rock formations requiring specialized demolition equipment it did not own. In order to finish the job on time, Apex immediately contacted several companies looking for the right equipment and settled on a company called Rocks-Around-The-Clock (“Rocks”), which had a special crusher machine entitled the “Masher.” The cost of the Masher was \$50,000.

Apex sent a purchase order to Rocks for the Masher. The purchase order stated in part as follows:

Please enter our order for the Masher. Seller shall warrant that the Masher is merchantable and fit for its particular purpose.

Rocks responded by shipping the Masher with a written confirmation of the order which stated in pertinent part:

The Masher is sold as is and is not subject to any warranties express or implied.

Upon receipt of the Masher, Apex paid \$10,000 to Rocks, with the balance payable, with interest, over five years. Apex executed a promissory note for the balance in favor of Rocks. In order to raise immediate cash, Rocks then assigned the note to First National Bank by indorsing and delivering the note to the Bank.

Apex used the Masher at the Providence site and found that the Masher could pulverize rocks of ordinary density but not the especially dense rock for which Apex had purchased the Masher. Apex sued Rocks in Rhode Island Superior Court. In the

meantime, First National Bank sought to enforce against Apex the promissory note it had received from Rocks. When Apex refused to pay, First National Bank sued Apex. The two cases were consolidated into one action.

While Apex's lawsuit was pending, Apex decided to pay off the promissory note that First National Bank was holding. Apex's president signed a blank check and delivered it to his secretary with instructions to complete the check by typing in First National Bank's name and the amount owed to the Bank. Instead, the secretary fraudulently completed the check by typing in the name of Second National Bank to repay a loan she had obtained. The secretary then delivered the check to Second National Bank in payment of her loan. Second National Bank obtained payment of the check. Apex's president found out and fired his secretary, refusing now to pay First National Bank or honoring his check to Second National Bank.

Please explain your answers to the following questions assuming that the entire transaction is governed by Rhode Island law:

1. Can Apex prevail in its action against Rocks?
2. Can First National Bank enforce the promissory note against Apex?
3. Can Second National Bank enforce the check against Apex?

Discuss only the substantive aspects of these issues and not any jurisdictional or procedural issues.

Corporations -

Harry Smith and Davy Jones, friends since childhood, got together in 2002 and formed Blackacre Realty, Inc. (“Blackacre Realty”), a Rhode Island corporation. The purpose of the corporation was to buy, sell and lease commercial real estate in Rhode Island. Smith and Jones, the sole shareholders, each had 50 shares of the corporation. Blackacre Realty’s Bylaws state that the Board of Directors shall have five members, but from the beginning the Directors have been Smith, Jones, their mutual friend Benny Arnold and Arnold’s brother.

Blackacre Realty’s business grew rapidly and, by the end of 2002, the company had acquired numerous properties in the Providence and Woonsocket areas. At about the same time, and unbeknownst to Smith and Jones, Arnold and his girlfriend Wanda formed A&W Cleaning Services (“A&W”), a partnership that specialized in cleaning commercial properties.

In early 2003, with the approval of the Board of Directors, Blackacre Realty entered into an agreement with A&W to provide cleaning services for all of Blackacre Realty’s properties. Arnold’s interest in A&W was not disclosed to the other members of the Board of Directors. The agreement provided that A&W would have exclusive right to provide cleaning services for a ten-year period. The fee for such services far exceeded the standard rates in the cleaning industry.

By 2004, Blackacre Realty began to experience severe financial problems and had to sell off many of its properties at severely depressed prices. In addition, the company was facing an unexpected tax liability as a result of some accounting errors the previous year. Smith and Jones have learned that Arnold is a partner of A&W and decide to void

the agreement in its entirety to avoid having to pay outstanding invoices due A&W for cleaning services.

In addition, Smith and Jones call a meeting of the Board of Directors while Arnold and his brother are out of town on vacation and vote to fill the vacant seat with Smith's wife. Then, Smith, his wife and Jones proceed to vote as Board members to remove Arnold as a member of Blackacre Realty's Board.

Please explain your answers to the following questions:

1. Can Blackacre Realty avoid the agreement with A&W?
2. Was Arnold properly removed as a member of the Board of Directors of Blackacre Realty?
3. Assuming A&W owes money to Blackacre Realty, to what extent, if at all, are Arnold and his girlfriend Wanda liable?

Civil Procedure/Equity -

You are a Rhode Island lawyer. This morning, a new client named Bob Greenthumb has come in to see you. He is president of the Garden of Eden Landscaping Company. Bob relates the following to you.

During the past few months, Bob has noticed that some of his best long-term commercial customers have been cancelling their contracts with Garden of Eden. As a result, Garden of Eden's income has decreased significantly.

Bob attributes this loss of business to a new competitor, Fields of Green Landscaping Company. He has heard that Fields of Green hired a former Garden of Eden employee and asked him to divulge the identities of its customers. Bob has also heard that Fields of Green has been contacting those customers and inducing them to cancel their contracts with Garden of Eden and to hire Fields of Green by undercutting Bob's fees.

About a month ago, Bob decided that he needed to do something about this. He called one of his best former customers, Big Box Department Store, which has several branch stores in this area. Big Box told Bob that they had hired Fields of Green. Bob told Big Box that he could deliver the same service at a lower rate than Fields of Green was charging. He also told Big Box that Field of Greens was about to go out of business and was not honoring its contracts, although he knew that this was false.

Two days later, Big Box called Bob and re-hired Garden of Eden at the reduced rate to serve all of its locations in southern New England. Big Box then terminated its contract with Fields of Green.

At first Bob was delighted. Yesterday, however, he was served with a complaint filed in the Sixth Division District Court in Providence, in which Fields of Green is seeking an injunction barring Bob from all further contact with any of Fields of Green's customers (including Big Box) and also damages.

Please describe what action you will take on behalf of Bob and Garden of Eden to protect their interests. Also, please discuss what defense(s) (if any) that Bob and Garden of Eden have in this litigation.

Agency -

Your client Veronica Vanity has come to your law office to consult with you. When she appears for her appointment, you notice that her face appears badly burned. She is extremely upset and wants your professional assistance. Veronica tells you that she had seen and heard advertising of a local company called the Fountain of Youth Beauty Spa. She was impressed by Fountain of Youth's promises in its advertising that its "skin specialists are ready to treat you to the total complexion rejuvenation experience" which would "take ten years off your face." Veronica made an appointment immediately.

Last week, Veronica appeared at the Spa for her treatment. She was greeted by a woman wearing a white coat and a badge indicating that her name is Epi Dermis and her title is "Fountain of Youth Skin Specialist". Veronica was escorted to a booth. Ms. Dermis then left the room for a few minutes and returned with a bottle of a liquid substance. She proceeded to apply the liquid to Veronica's face. Within five minutes, Veronica's face was in excruciating pain. She complained to Ms. Dermis, who told her that some discomfort was expected, but that the results would be well worthwhile. Veronica tried to withstand the pain, but after a few more minutes it had become intolerable. When Veronica again complained, Ms. Dermis examined the label on the bottle from which she had taken the liquid. She then gasped "Oh my god, I am so sorry" and began to cry.

Veronica dialed 911 on her cell phone. She was taken to the nearest hospital emergency room where a dermatologist examined Veronica's face and determined that

she was suffering from third degree burns. Veronica later followed up with her dermatologist who predicts that Veronica's face will remain permanently scarred to some degree. Veronica is devastated by this and wants you to pursue all of her legal remedies.

You contact the management of Fountain of Youth Beauty Spa about this unfortunate incident. The manager tells you that the "skin specialists" are not their employees, and that Fountain of Youth is not responsible for any of their actions. You investigate further and learn that Fountain of Youth "skin specialists" are not paid a salary by Fountain of Youth. Rather, they rent their booths from Fountain of Youth at the rate of twenty-five percent of the fees they earn. You also learn that the products which they use are sold to them at a profit by Fountain of Youth.

You investigate further and learn that the directions on the bottle of liquid which Ms. Dermis applied to Veronica's face was not intended for direct application to the skin. Rather, only five drops of the liquid were supposed to be mixed with one cup of another substance before application to the skin.

May the Fountain of Youth Beauty Spa be held liable for Veronica's injury? May Ms. Epi Dermis be held liable for Veronica's injury?

Please explain your reasons for your answer.

TRUST, PROBATE, WILLS, and ESTATES

You are an attorney in your hometown in Rhode Island. An old schoolmate, Bill McMillan, has had you do various legal jobs for him relating to his plumbing business.

His mother consults you about a Will. She tells you that her oldest son, Michael, calls on her birthday every year but that she hasn't seen him in 15 years. She thinks he is in Washington. Bill has told her to eliminate him from the Will. Her youngest son, Paul, is a frequently relapsing alcoholic who eats dinner with her weekly and does household chores for her. Bill has told her not to let Paul get his hands on any of the money. Bill has her to dinner on holidays and monthly in between.

In accordance with Mrs. McMillan's instructions, you draw up the following documents:

1. Financial Power of Attorney naming Bill as her agent.
2. Health Care Power of Attorney naming Paul as her agent to make health care decisions.
3. Will placing all of her assets in trust for Paul naming you and her accountant as executors and trustees. The funds are to be used for Paul's best interest and welfare.

Two weeks later, Mrs. McMillan signs the documents with you and your secretary witnessing them. A few months later, Mrs. McMillan dies of a stroke while working in her garden.

Bill hires another attorney to contest the Will. Paul consults you about whether there is any way Michael can have some of the money.

Discuss what you plan to do as Paul's attorney (including (i) possible attacks, (ii) defenses, (iii) procedures, and (iv) forums).

Trusts - #2 -

Lou and Lolita were longtime co-habitants who had been married previously. They married shortly before Lolita's (expected) death from pancreatic cancer telling everyone that they believed Lou would get larger Social Security payments as a result.

Before their marriage, Lolita asked you to prepare a prenuptial agreement which she and Lou signed. In part it reads:

"Each party waives all rights that he or she may have upon the death of the other party, including all rights under intestacy, life estate, and real estate, spousal allowance, and all rights to any payments under the other party's retirement plan. Notwithstanding the foregoing, either party may voluntarily provide for gifts or other benefits to the other either during lifetime or upon death."

When Lolita signed this prenuptial agreement, she also signed a Will. This Will gave \$125,000 to Lou, and named Lolita's brother, Ted, as executor. The Will provides that all of Lolita's other assets will go to Ted's three children, one of whom died in an automobile accident the day before Lolita's death. He left a wife and two little children.

Ted asks to meet with you and mails you the Will prior to your meeting. When you open it, you notice that although Lou and Lolita insisted you did not need to supervise the signing of the documents, the self-proving affidavit attached to the Will was not completed by either the witnesses or a notary. You can only read one of the witnesses signature's; it turns out to be a nurse that took care of Lolita. When you call her, the nurse tells you that the other witness was one of the caterer's helpers whom they grabbed as he went through dining room and that he had been in doorway to the hall, not the dining room itself, when Lolita signed the Will.

When Ted comes in the next day, he is already upset and threatening to sue. He tells you that the business where Lolita worked has already been in touch with Lou. They told him that he is the beneficiary of Lolita's retirement plan because federal law requires

that the spouse is automatically the beneficiary unless the spouse signs a waiver of these rights. Lou has already processed the paperwork to collect the account.

Please advise Ted about the disposition of Lolita's house, investment account, retirement plan assets, Social Security, and family heirlooms.

Please advise your partners about the validity of Ted's threat to sue you.

CONFLICT OF LAWS

During early 2001, the Foxx Investment Company of Las Vegas, Nevada, began offering variable annuity contracts to customers in all states, including Rhode Island. The contracts promised to place a valuation on the contract each year beginning in March 2002. Bronson Baer, of Providence, Rhode Island, purchased an annuity pursuant to the terms of the offering prospectus. The contract was signed by Baer in Rhode Island and returned to Foxx which signed and accepted the contract in Nevada.

Following issuance of the first annual report on valuation of the annuity, during 2002, a dispute arose as to the proper valuation of the annuity. Baer, as a Rhode Island annuitant, filed an action in Rhode Island Superior Court for Providence County alleging breach of contract, breach of duty and breach of fair dealing by Foxx Investment Company.

The annuity contract issued by Foxx provided that interpretation of the contract was to be determined by the law of each state in which an annuity was sold, including its conflict of interest laws. Apart from that, there was no contractual choice of law provision regarding application of any state's law to all aspects of the contract.

In the Providence County Superior Court action, a dispute has arisen as to which State's law controls, Rhode Island or Nevada. Please discuss this conflict of law issue under applicable Rhode Island conflict of law principles.

Family -

Brad and Jennifer were married in Rhode Island in 1985. They have three children, Arthur, age 15, Shannon, age 12, and Andrew, age 7. Up until two years ago, Brad had a very time consuming job that required him to travel throughout the world. He spent little time with his children and Jennifer was most of the time, the only full time parent. The children's paternal grandparents, who lived close by, spent considerable time with the children and saw them on a regular basis.

Two years ago, Brad left his employment and became the primary caretaker. At the same time, Jennifer became employed and spent a considerable amount of time away from the home. During this time, Jennifer also became involved romantically with another woman.

All three children are enrolled in a private school approximately fifteen minutes from their home.

Jennifer has now filed for divorce, indicates that she has left her employment and seeks sole placement and custody of the children of the marriage. Jennifer has also stated that upon her divorce from Brad, she intends to go to Massachusetts and marry her female friend.

Upon being interviewed by a Guardian Ad Litem appointed by the court, the oldest child indicates a desire to live with his mother, although stating that he also enjoys being with his father. The twelve year old indicates the reverse. She would like to live with her father, but also enjoys being with her mother. The seven year old was not interviewed.

Brad is repulsed by his wife's involvement with another woman and has consistently tried to limit her time with the children.

The parties have continued to live in the same house. In spite of all the chaos, the children have adjusted well to the fact that their parents are going to be separated and divorced, and continue to do well in school. Both parties have filed for custody of the three children. Brad wants sole custody and sole placement. Jennifer has asked that the court award joint custody with placement with her. Brad is asking the Court to deny Jennifer any visitation so long as she maintains any relationship with her female friend.

You are the Judge. Based on the above facts, to whom would you award placement: Brad or Jennifer. Would you award sole custody or joint custody and/or sole placement or joint placement. What restrictions or conditions if any, would you put on either parent's visitation or relationship with the children.

PARTNERSHIP -

Clement Brooks, Roy Been and Andrew Little are general partners in a men's clothing store ("Brooks, Been & Little"), catering to well-dressed professors (and even some students) on Providence's East Side. They have been in business as general partners for thirty (30) years. There is no written partnership agreement. They have always contributed evenly to the partnership assets and have likewise shared profits and liabilities evenly. Partnership assets include the store, the lot on which it sits, inventory, receivables and an old Packard car used for deliveries.

Sadly, Clement Brooks, while on a golfing vacation, loses his grip on his golf club, which flies up in the air and hits him on the head, causing severe brain damage and ultimately his death.

After his funeral, Andrew and Roy meet privately at the Moshasseck Reading Room to discuss the future of the clothing store and the Brooks, Been & Little partnership. Hastening their need for a meeting are certain demands of Clement's widow, Jennie M.F. Brooks, who wants to immediately step into her late husband's place in the business. Neither Andrew nor Roy are fond of Jennie, who operates a women's undergarment store in Cranston called "Supports by Jennie."

Andrew moans: "We have to include her in the business! She is the sole beneficiary of Clement's estate. Roy replies in anguish: "It doesn't matter. The partnership ended when Clement died. We can't even open tomorrow."

- 1 a. Does Jennie automatically become a partner in Clement's partnership if she is the sole beneficiary of his estate?
- b. Can Roy Been and Andrew Little open up the clothing store the day after Clement Brooks's funeral?

Just then Andrew's nephew - - Bertrand - - joins them. Bertrand is a 2 L student at Wyle University Law School and aspires be a Wall Street lawyer. He listens to Andrew's and Roy's laments but advises them cheerfully: "You should talk to a lawyer, but I think that you two can continue as partners in your clothing business."

2. Is Bertrand correct? On what do you rely for your answer?

“Do we have to change the name?” Roy inquired. “Brooks adds a touch of class which has always helped the business.” “Well” said Bertrand, “Again you should check with your lawyer, but I don’t think so.”

3. Is Bertrand right or wrong?

Just then Jennie breaks into the room. “I was told you were having a meeting here.” She exclaimed. “I hope you’re not planning to continue the clothing business without me. I’m the Executrix of my poor late husband’s estate. You have to have my permission to continue the clothing business and I won’t give it unless I can open up a branch of my ladies wear business on the first floor.” Roy and Andrew cringed.

4a. Can Roy and Andrew continue the business without Jennie’s consent?

b. If Roy and Andrew continue the clothing business without reaching any agreement with Jennie, what legal rights does Jennie have to any partnership assets?

1. As Executrix of Clement’s estate?
2. As sole beneficiary of Clement’s estate?

In responding to the preceding questions address yourself only to issues of Rhode Island partnership law.